Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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No. 86-1676

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

KENNETH MORRISON

Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS

Respondent.

ON WRIT OF CERTIORARI TO THE

APPELLATE COURT OF THE STATE OF ILLINOIS

THIRD DISTRICT

PETITION FOR WRIT OF CERTIORARI

KENNETH MORRISON
Resident of Illinois,
U.S. Citizen, Pro Se

215 W. 9th St.
Streator, Ill. 61364

No Phone

QUESTIONS PRESENTED

1. Does the Illinois Statutory Provisions concerning the duration of criminally prosecuting one for driving while license revoked violate a defendant's 14th Amendment Right to due process and equal protection under the law?
2. Did the prosecution violate the defendant's 14th Amendment Right at a jury trial in suppressing certain evidence?

THE PARTIES

Due to the constitutional challenge to an Illinois statute Neil Hartigan, Attorney General for the State of Illinois, Eric Swartz, District Attorney for Marshall County, Illinois and Kenneth Morrison, resident of Illinois, are all parties in the court below.

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OPINIONS BELOW

The Opinion of the Appellate Court of the State of Illinois - Third District, with the order of modification of opinion appears in Appendix A in this petition. It is published in full as People v. Morrison _____ Ill. App. 3d _____, _____ N.E. 2d _____, _____ Ill. Dec. _____ (No. 3-85-0684, 3d Dist., filed November 12, 1986). A copy of the Motion of the Appellate Court's Denial for Rehearing is attached as Appendix B. The Order of the Illinois Supreme Court in denial for Leave to Appeal is attached in Appendix C. A copy of the stay of mandate pending review by the United States Supreme Court is attached as Appendix D.

JURISDICTION

The modified opinion of the Appellate Court of the State of Illinois, Third District was filed on November 12, 1986. Timely petitions for Leave to Appeal were denied by the Illinois Supreme Court on February 6, 1987. The time for petitioning for a writ of certiorari runs from the date of refusal by the highest jurisdictional state court [American Railway Express Co. v. Levee 263 U.S. 19, 20-21 (1923).] This petition is filed within 60 days of that date or on or before April 7, 1987 and is therefore timely. This Court's jurisdiction is invoked under 28 U.S.C., section 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent part of the 14th Amendment to the United States Constitution provides:

> ". . . nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

During 1978 and 1979 the defendant, a commercial truck driver, received several citations for speeding and lighting failures on his equipment. On February 14, 1979 the State of Illinois revoked his driver's licesnse for reasons of "repeated convictions which show a disrespect for the laws".

Subsequently the defendant on July 2, 1985 was arrested and charged with driving while license revoked pursuant to Illinois Statute sec. 6-303 (Appendix E-3). Bond was set at $30,000 and defendant remained incarcerated until a jury trial on August 19, 1985.

During the course of the trial one of the elements of the state's evidence consisted of the revocation notice dated February 14, 1979 and another statement implied that traffic citations prior to 1979 were

the reasons why the defendant's privilege to drive was revoked on July 2, 1985. Defendant bitterly contested.

The defendant produced in defense a certified copy of his driving abstract which clearly showed defendant had had a formal hearing; license revocation dated February 14, 1979 had been rescinded or terminated, and that the defendant merely had no valid license on July 2, 1985 pursuant to Illinois Statute 6-601 (Appendix E-4).

In several out-of-jury sessions the question of length or duration of revocation arose and the state prosecutor was successful in barring the defendant from explaining the driver's abstract in detail and that the defendant may not cite the statutory provisions which may have led to the defendants's conduct.

The defendant was convicted and the issue of due process and equal protection was questioned at post-trial motions and

finally at the Supreme Court. Defendant was sentenced to eleven months imprisonment and posted an appeal bond on October 23, 1985. The Supreme Court has granted a stay of the mandate pending a petition for Writ of Certiorari from the United States Supreme Court.

The question of the privilege to drive an automobile is a constitutional right has been clearly established (Const. Art. I, sec. 6). The right of the state in denying the privilege has also been upheld. The Illinois Statutory Provisions as contained in Section E of the Appendix are extremely vague and misconstrued in contending that a person may be charged with driving while license revoked pursuant to sec. 6-303 six and one-half years later for minor traffic citations issued eight years prior to date of arrest.

The pertinent parts of the legislative intent at determining the length the state

may revoke one's license are contained in Appendix E which key excerpts are now cited in part:

> "Any person whose license...has been revoked shall not be entitled to have his license or permit renewed or restored." (Appendix E-1.)

> "However, upon payment of the reinstatement fee...at the end of any period of suspension, if not ineligible for some other reason, shall be entitled to reinstatement of driving privileges." (Appendix E-2.)

> "...if the conviction was upon a charge of driving while driver's license, permit or privilege was revoked...the Secretary of State shall not issue a driver's license for an additional period of 1 year." (Appendix E-3.)

> "...a violation of section 6-101 shall be:
>
> 1. A class A misdemeanor if the person failed to obtain a driver's license or permit after expiration of a period of revocation." (Appendix E-4.)

The Third District Appellate Court opinion on this matter as contained in Appendix A is to state:

> "...Following the expiration of the revocation period, while a person may be eligible for application, his license remains 'revoked' until a new license is issued by the Secretary of State." (Appendix A-4.)

This ruling is in direct conflict with the legislative intent of section 6-601 (Appendix E-4) which was based on old Illinois case law and has no basis on statutory provisions.

The trial transcript clearly shows the defendant had a different opinion on this issue and that the court at trial was extremely vague and misconstrued on this question of duration of revocation period.

The second point is the prosecution was successful in denying the defendant's request to explain the meaning of his driver's abstract. If defendant had been al-

lowed to explain in testimony the explanation of his driving abstract and his understanding of the statutory provisions of Illinois Licensing Law, the jury would have found an acquittal. The driving abstract clearly showed that defendant was not guilty of driving while license revoked but merely did not have a valid license.

REASONS WHY THE WRIT SHOULD BE GRANTED

The question of the duration of how long may a state deny the privilege to operate a motor vehicle and for what reasons they may deny this right has been under increasing attack in the courts primarily due to lack of any statutory provisions to address the issue.

A case decided by the Supreme Court of North Carolina Ennis v. Garrett 184 S.E. 2d 246, 279 N.C. 612 (1971) over the identical issue raised here, determined the state could not revoke a person's license for over a year.

The defendant at trial questioned the statute he was charged [sec. 6-303 (Appendix E-3)] which implied that revocation is for a one year period in that there are provisions for additional periods of revocation.

The Supreme Court in numerous cases has upheld denial of due process where

there is vague statutory language. In Smith v. Goguen (1974) 415 US 566, 39 L ED 605, 94 S Ct 1242 the court ruled the due process doctrine of vagueness requires:

> "...legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent 'arbitrary and discriminatory enforcement.'"

The case before this court now concerns a situation where the prosecution did not even know what charge the defendant was guilty of. [A request for the trial transcript has been made upon the Appellate Court to be forwarded to the Supreme Court.]

The second question concerns the denial to introduce statements by the defendant concerning the explanation of his driving abstract.

In Monroe v. Blackburn (1979, CA5 La) 607 F2d 148, reh den (CA5 La) 610 F2d 818 and cert den 446 US 957, 64 L Ed 2d 816,

100 S Ct 2929 it is stated defendant must prove three conditions for denial of due process of the rule of Brady v. Maryland (1963) 373 US 83, 10 L Ed 2d 215, 83 S Ct 1194. They are:

(1) prosecution's suppression of evidence,

(2) favorable character of suppressed evidence for a defense, and

(3) materiality of suppressed evidence.

The three preceding elements that relate to this case are as follows:

(1) The trial transcript clearly shows the state was successful in denying the defendant from explaining what certain code words on his driver's abstract concerned.

(2) On the driver's abstract was the word "YES" which related to a stop in effect for the safety and financial responsibility clause. The defendant wished to explain this and how that order in prior lines had been terminated.

(3) If the defendant had been allowed to explain these code words the jury in deliberations would have been able to understand the Driver's Abstract Code and found an acquittal.

Accordingly this below case clearly is a flagrant disregard of the Brady v. Maryland rule.

CONCLUSION

For the foregoing reasons it is respectfully requested that this Court grant a Writ of Certiorari and set aside the decision of the Appellate Court of Illinois, Third District.

DATED: April 6, 1987

Respectfully submitted,

By _____

Pro Se

CERTIFICATE OF SERVICE BY MAIL

I, Kenneth R. Morrison, a citizen of the United States, am over 18 years of age, a resident of the State of Illinois, and have a legal residence of 215 W. Ninth St., Streator, Illinois 61364.

I have served the within PETITION FOR WRIT OF CERTIORARI AND APPENDICES (Morrison v. Illinois) as follows: By placing three copies in separate envelopes and addressed to:

NEIL F. HARTIGAN
Attorney General
State of Illinois,
Springfield, Ill. 62706

ERIC SWARTZ
State's Attorney
Marshal County
Lacon, Ill. 61540

and one copy enclosed in an envelope and addressed to:

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, Ill. 62706

JOSEPH FENNESSEY
Clerk of Court
Third District, State of Illinois
1028 N. Columbia Av.
Ottawa, Ill. 61350

Each envelope was then sealed and with the postage prepaid deposited in the United States mail by me at Mount Prospect, Ill. on the 6th day of April 1987.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 6, 1987 at Mount Prospect, Illinois.

Kenneth R Morrison

KENNETH MORRISON

No. 3-85-0684

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT A.D., 1986

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee -vs- KENNETH MORRISON, Defendant-Appellant.	) Appeal from the Circuit Court of the 10th Judicial Circuit, Marshall County, Illinois) PUBL. IN FULL) Honorable James M. Bumgarner Presiding Judge

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Mr. JUSTICE BARRY delivered the opinion of the Court.

The defendant, Kenneth R. Morrison, was charged with and convicted of driving while his driver's license was revoked. (Ill. Rev. Stat. 1985, ch. 95½, par. 6-303.) The defendant appeals. We affirm.

The facts are not in dispute. On July 2, 1985, the defendant was stopped by an Illinois State Police trooper for driving

without a validation sticker on the license plate of his vehicle. Upon discovering that the defendant's license had been revoked, the trooper issued citations for driving while license was revoked and driving without valid registration. Prior to trial, the State was granted its motion to dismiss the charge of driving without valid registration.

At trial, although the trial court had earlier appointed a public defender to represent the defendant, the defendant chose to conduct his defense without the assistance of counsel. The court, however, permitted the defendant to consult from time to time with the public defender, who remained in the courtroom during the course of the trial. Also at trial, the defendant introduced an abstract of his driving record which contained other offenses.

Following deliberations, the jury rendered a verdict of guilty. The trial court sentenced the defendant to a prison term of eleven months. This appeal followed.

The defendant raises four issues on appeal. The first is whether the defendant was properly charged with, and convicted of, driving while his driver's license was revoked. The defendant contends that on July 2, 1985, the date of his arrest, he was not driving with a revoked license, but was merely driving without a license because his one-year revocation period had terminated on May 31, 1985. Therefore, the defendant argues, he should have been tried on the charge of driving without a license.

The elements of driving while driver's license is revoked are: (1) the act of driving a motor vehicle in Illinois; and (2) the fact of the revocation of the driver's license. (People v. Turner (1976), 64 Ill. 2d 183, 354 N.E. 2d 897.) When a person's driver's license has been revoked, he will not be issued another driver's license until the revocation period has ended. That person may then apply for a license, but

must pay a reinstatement fee. In any event, a license will not issue until the Secretary of State has made a determination that granting the privilege will not endanger the public safety or welfare. (Ill. Rev. Stat. 1985, ch. 95½, par. 6-208.) There is no automatic restoration of driving privileges upon the expiration of the revocation period provided for in section 6-208. People v. Turner (1976), 64 Ill. 2d 183, 354 N.E.2d 897; People v. Suddoth (1st Dist., 1964), 52 Ill. App. 2d 355, 202 N.E.@d 120; compare, People v. Johnson (3rd Dist., 1983), 115 Ill. App. 3d 987, 451 N.E.2d 28.

From the above statutory and case law, it is apparent that the revocation period is the time period when a person may not apply for a new license. Following the expiration of the revocation period, while a person may be eligible for application, his license remains "revoked" until a new license is issued by the Secretary of State. In this

case, although the period had passed during which the defendant was prohibited from renewing his revoked license, his license was still revoked as of July 2, 1985. Based on the foregoing, we find that the defendant was properly tried and convicted on the charge of driving with a revoked driver's license.

The defendant's second issue . . . (immaterial to issues at question).

For the reasons stated, the judgment of the circuit of Marshall County is affirmed.

Affirmed.

WOMBACHER and HEIPLE, JJ., concur.

The Appellate Court

Third District, State of Illinois

Joseph Fennessey
Clerk of Court

Ottawa, Illinois 61350
815 434-5050

Be it Remembered, That, to wit: On the 12th day of November, 1986, certain proceedings were had and orders made and entered of record by said Court, among which is the following, viz:

3-85-0684 People of the State of Illinois, Appellee vs. Kenneth R. Morrison, Appellant	APPEAL FROM: Marshall County Hon. James Baumgardner 85 TR 749 85 TR 750

Now on this day this cause coming on for hearing upon the petition for rehearing filed herein, and the Court having duly considered said petition, as well as the matters and things alleged in support thereof, and being

now fully advised in the premises;

It is therefore ordered by the Court that said petition for rehearing be and the same is hereby overruled and denied.

OPINION MODIFIED

_____

Clerk of the Appellate Court

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035
February 6, 1987

Mr. Kenneth Morrison
LaSalle County Jail
707 Etna Road
Ottawa, Ill 61350

N. 64561 - People State of Illinois, respondent, v. Kenneth Morrison, petitioner. Leave to appeal, Appellate Court, Third District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on March 2, 1987.

STATE OF ILLINOIS

SUPREME COURT CLERK

SUPREME COURT BUILDING

SPRINGFIELD 62706

March 9. 1987

Mr. Kenneth Morrison
LaSalle County Jail
707 Etna Road
Ottawa, IL 61350

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 64561 - People State of Illinois, respondent, v. Kenneth Morrison, petitioner.

Motion by petitioner, pro se, to stay the mandate pending the timely filing and disposition of a petition for writ of certiorari in the United States Supreme Court. Motion allowed.

cc: AG/Crim
SA/Marshall
SAAP/Ottawa

6-208. Period of suspension--Application after revocation

(b) Any person whose license or permit or privilege to drive a motor vehicle on the highways has been revoked shall not be entitled to have such license or permit or privilege renewed or restored. However, such person may make application for a license as provided by Section 6-106 of this Act:

(1) If the revocation was for a cause which has been removed, at any time; or

(2) After the expiration of 1 year from the date of revocation, and upon payment of the reinstatement fee set out in subsection (g) of Section 6-118.

In either event, the Secretary of State shall not issue such license unless and until he is satisfied after investigation of such person that to grant the privilege of driving a motor vehicle on the highways will not endanger the public safety or welfare.

6-209. Notice of cancellation, suspension or revocation--Surrender and return of license

sec. 6-209. Notice of cancellation, suspension or revocation--Surrender and return of license. The Secretary of State upon cancelling, suspending or revoking a license or permit shall immediately notify the holder thereof in writing and shall require that such license or permit shall be surrendered to and retained by the Secretary of State. However, upon payment of the reinstatement fee set out in subsection (g) of Section 6-118 at the end of any period of suspension of a license the licensee, if not ineligible for some other reason, shall be entitled to reinstatement of driving privileges and the and the return of his license if it has not then expired; or, in case it has expired, to apply for a new license.

6-303. Driving while driver's license, permit or privilege to operate a motor vehicle is suspended or revoked

sec. 6-303. Driving while driver's license, permit or privilege to operate a motor vehicle is suspended or revoked. (a) Any person who drives or is in actual physical control of a motor vehicle on any highway of this State at a time when such person's driver's license, permit or privilege so to do or the privilege to obtain a driver's license or permit is revoked or suspended as provided by this Code or any other law, except as may be specifically allowed by a restricted driving permit issued under this Code, shall be guilty of a Class A misdeameanor.

(b) . . . and if the conviction was upon a charge of driving while a driver's license, permit or privilege was revoked, except as may be allowed by a restricted driving permit issued under this Code, or if the conviction was upon a charge which indicated that a vehicle was operated during the time when the driver's license, permit or privilege of said person was revoked, the Secretary of State shall not issue a driver's license for an additional period of 1 year from the date of conviction if such conviction was obtained after the date such person would have been entitled to apply for a new driver's license.

6-601. Penalties

(c) Unlicensed driving. Except as hereinafter provided a violation of Section 6-101 shall be:

1. A Class A misdemeanor if the person failed to obtain a driver's license or permit after expiration of a period of revocation.